

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

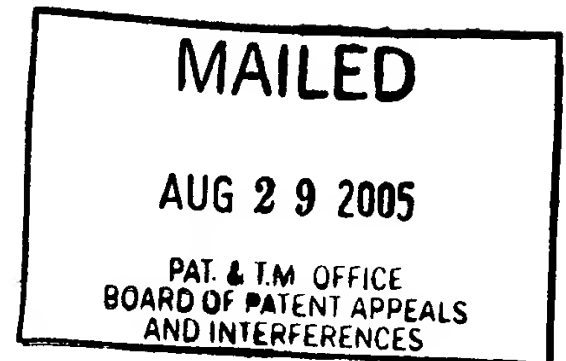
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BUNJI INAGAKI, FUMINORI TERAOKA, HIROKI IWASA,
KIYOHARU IGA and MICHIIYASU YAJIMA

Appeal No. 2005-1449
Application 09/752,836

ON BRIEF



Before FRANKFORT, McQUADE, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3 through 21, all of the claims remaining in the application. Claim 2 has been canceled.

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As indicated on page 1 of the specification, appellants' invention relates to "a vehicle mirror assembly which is provided at, for example, the door of a vehicle and a method for assembling the same." Claims 1, 7, 15 and 21 are representative of the subject matter on appeal and a copy of those claims may be found in Appendix I of appellants' brief.

The sole prior art reference of record relied upon by the examiner is:

Polzer	5,245,480	Sept. 14, 1993
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Claims 1, 3 through 7, 10, 11, 15 and 18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Polzer.

Claims 8, 9, 12 through 14, 16, 17 and 19 through 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Polzer.

Rather than reiterate the conflicting viewpoints advanced by appellants and the examiner regarding the above-noted rejections, we refer to the examiner's answer (mailed July 16, 2003) for a complete explanation of the examiner's position, and to

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appellants' brief (filed April 7, 2003) and reply brief (filed August 22, 2003) for the arguments thereagainst.

OPINION

Having carefully reviewed the anticipation and obviousness issues raised in this appeal in light of the record before us, we have made the determination that both of the rejections reviewed on appeal will be sustained. Our reasoning for such determination follows.

Concerning the rejection of claims 1, 3 through 7, 10, 11, 15 and 18 under 35 U.S.C. § 102(b) based on Polzer, appellants point to the "retracting unit" set forth in claims 1, 7 and 15 on appeal and contend that the examiner has not given the claimed terminology "stand" and "rotating portion" therein the proper meaning as defined in the instant specification, nor properly construed such terms as they would be understood by one of ordinary skill in the art consistent with the specification. Although appellants concede that the mounting achieved in Polzer via the tubular rivet (75) extending through the tubular bore (12) of the arm-like extension (10) of support plate (3) enables pivoting of the mirror structure relative to the mirror base (2)

and vehicle body, appellants urge that the retracting structure of Polzer is completely devoid of the "stand" and "rotating portion" of the presently claimed invention. See pages 4-7 of the brief and the entirety of the reply brief.

On pages 3, 5 and 6 of the answer, the examiner has set forth his position concerning the readability of claim 1 on the structure of the mirror assembly seen in Polzer. More particularly, with regard to the disputed "retracting unit," the examiner contends that the vertically oriented tubular rivet (75) of Polzer is considered as the "stand" and that the arm-like extension (10) of the bracket/support plate (3) is the "rotating portion." The examiner specifically notes that the arm-like extension (10) and the bracket/support plate (3) of the mirror assembly are supported on and rotate about the "stand" (tubular rivet 75) to achieve a retracted or folded position relative to the mirror base (2, 9) and vehicle body. See, e.g., column 2, lines 39-45 and lines 57-61 of Polzer. On page 4 of the answer, the examiner has urged that the method limitations of claims 7, 10, 11, 15 and 18 are inherent in the structure of Polzer's mirror device.

Like the examiner, we view the broadly recited "retracting unit" of claims 1, 7 and 15 on appeal as being readable on the vertically oriented tubular rivet (75) and arm-like extension (10) of the vehicle mirror assembly of Polzer, which structure broadly defines a "stand" and "rotating portion" as found by the examiner and permits retraction or folding of the mirror (5) and support plate (3) relative to the mirror base (2, 9) and vehicle body.

Contrary to appellants' assertions, we find no "single definition" (brief, page 5) of the claimed "retracting unit" and "stand" and "rotating portion" components in the present specification. The portion of the specification pointed to by appellants (i.e., page 6, lines 9-16) merely broadly describes the "retracting unit" and does not provide any affirmative definition of such an element, or its component parts. At best, page 6, lines 9-16, of the specification sets forth only one broad example of a "retracting unit." Since the structure in Polzer pointed to by the examiner performs the recited function and broadly includes a "stand" (vertically oriented rivet 75) and a "rotating portion" (arm-like extension 10) which is rotatable on the "stand," we will affirm the rejection of claim 1 under 35 U.S.C. § 102(b). In accordance with the grouping of claims

set forth on page 4 of the brief, it follows that claims 3 through 6 will fall with independent claim 1 from which they depend.¹

Regarding claims 7 and 15, appellants contend in the brief (page 7) that these claims directed to the method of assembling a vehicle mirror assembly have a "retracting unit" and include the steps of "mounting the rotating portion of the retracting unit to the bracket . . .," and then "mounting the stand of the retracting unit to a door mirror stay to mount the vehicle mirror assembly to the door of the vehicle." Appellants then urge that since Polzer does not teach the "stand" and "rotating portion" of the "retracting unit," Polzer cannot teach or suggest the above-noted steps.

¹ In addition to our determination based on Polzer, we also fail to see how apparatus claims 1, 3 and 5 of the present application distinguish over Prior Art Figure 7 of the application drawings. In that regard, we note that claim 1 on appeal does not require that the visor rim and visor cover be separate and independent elements as shown in the application drawings, but merely sets forth that the mirror visor includes or comprises a visor cover opposing the back surface of the mirror and a visor rim covering the outer peripheral surface of the mirror, which the mirror visor (82) of the mirror assembly (70) seen in Figure 7 of the application and described on pages 1-2 thereof does.

For the reasons already set forth above in our discussion of claim 1, we find this line of argument unpersuasive. The mirror assembly of Polzer clearly includes a "retracting unit" having a "stand" and a "rotating portion." Moreover, we note, as the examiner has, that claim 7 on appeal does not include limitations concerning a retracting unit having a "stand" and a "rotating portion," or recite the assembly steps specifically quoted above, as argued by appellants. In addition, we find appellants' new assertions in the reply brief (pages 2-3) to be unpersuasive. Suffice to say that the arguments presented are more specific than the broad language and limitations actually present in claim 7. Thus, we will sustain the examiner's rejection of claim 7 under 35 U.S.C. § 102(b).

In accordance with the grouping of claims set forth on page 4 of the brief, it follows that claims 8 through 21 will fall with claim 7. Thus, the examiner's rejection of claims 7, 10, 11, 15 and 18 under 35 U.S.C. § 102(b) as being anticipated by Polzer and the rejection of claims 8, 9, 12 through 14, 16, 17 and 19 through 21 under 35 U.S.C. § 103(a) as being unpatentable over Polzer, will likewise be sustained.

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In light of the foregoing, it follows that the decision of the examiner rejecting claims 1, 3 through 7, 10, 11, 15 and 18 of the present application under 35 U.S.C. § 102(b) and claims 8, 9, 12 through 14, 16, 17 and 19 through 21 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Charles E. Frankfort

CHARLES E. FRANKFORT)
Administrative Patent Judge)

John P. McQuade

JOHN P. McQUADE)
Administrative Patent Judge)

Jeffrey V. Nase

JEFFREY V. NASE)
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